

MICHIGAN SUPREME COURT



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CAPERTON RULING BY U.S. SUPREME COURT HIGHLIGHTS IMPORTANCE OF FAIR AND IMPARTIAL JUSTICE, SAYS MICHIGAN SUPREME COURT CHIEF JUSTICE MARILYN KELLY

Michigan high court to consider *Caperton v Massey* in formulating disqualification procedures for justices; due process, public confidence in courts at stake, Kelly says

LANSING, MI, June 9, 2009 – Yesterday’s U. S. Supreme Court ruling on the issue of judicial disqualification, while an “exceptional case because of its facts,” will be helpful to the Michigan Supreme Court as it reviews its procedures for recusal of justices, said Michigan Supreme Court Chief Justice Marilyn Kelly.

Just as importantly, she said, it sends a message about the justice system’s commitment to fair, impartial proceedings. “As the Court points out, nothing less than due process is at risk when a litigant can effectively choose the judge who will hear his or her case,” Kelly observed.

By a 5-4 vote in a case from West Virginia, the U. S. Supreme Court said Monday that a West Virginia justice should not have participated in decisions overturning a \$50 million judgment against the company whose chief executive had been the most generous supporter of that justice’s election campaign. By so doing, the justice deprived the other litigant of the constitutional right to a fair trial, the majority said.

In an opinion written by Justice Anthony Kennedy, the majority said that the “probability of bias” required the West Virginia justice to step aside. Kennedy emphasized that not every campaign contribution would demand recusal, observing that “this is an exceptional case.”

Kennedy wrote, “We conclude that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent. The inquiry centers on the contribution’s relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election.”

Kelly said that the *Caperton* majority “is not suggesting that a judge or justice must be disqualified in all cases involving campaign contributors. In this particular case, based on some extreme circumstances, the Constitution required the West Virginia justice to recuse himself.”

The majority was right not to adopt “a hard-and-fast rule about how large a contribution will require a judge’s disqualification,” Kelly added. “Instead, the focus is on the contribution’s size relative to the total amounts raised and spent, and the apparent impact on the election.”

While *Caperton* does not offer a bright-line rule for judicial disqualification, Kelly said she believes the ruling will assist the Michigan Supreme Court as it develops its own disqualification rules for justices.

“I think the U.S. Supreme Court makes it clear that the states’ codes of judicial conduct are the primary protection against judicial campaign abuses,” she said. “We’re already working on strengthening disqualification rules for this Court, and *Caperton* signals that we do need to have appropriate protections in place.”

The Michigan Supreme Court is taking public comments until Aug. 1 on its proposed recusal standards for justices, which can be viewed online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#Other>. Comments can be e-mailed to MSC_Clerk@courts.mi.gov or sent to Michigan Supreme Court, Clerk's Office, PO Box 30052, Lansing, MI 48909 (reference ADM 2009-04).

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